

ANS SB: 11

ASSEMBLY BILL 788

1 (a) A brief description of the purpose of the solicitation, contract, or order.

2 (b) The name of the agency to which the materials, supplies, equipment, or
3 contractual services are to be provided.

4 (c) A contact person within the agency under par. (b) from whom further
5 information may be obtained.

6 (d) The date of the solicitation and, if the contract has been entered into or the
7 order has been placed, the date of that action.

8 (e) A brief description and the date of any change order.

9 (f) The estimated expenditures to be made under the contract or order,
10 including any changes thereto, or if the contract or order is for continuing purchases
11 the estimated expenditures to be made under the contract or order in the current
12 fiscal biennium.

13 **SECTION 2.** 19.48 (11) of the statutes is created to read:

14 19.48 (11) Maintain an Internet site on which the information required to be
15 posted by agencies under s. 16.753 (4) can be posted and accessed. The information
16 on the site shall be accessible directly or by linkage from a single page on the Internet.

17 **SECTION 3.** 23.41 (5) of the statutes is amended to read:

18 23.41 (5) Each contract for construction work entered into by the department
19 under this section shall be awarded on the basis of bids or competitive sealed
20 proposals in accordance with procedures established by the department. Each
21 contract for construction work shall be awarded to the lowest responsible bidder or
22 the person submitting the most advantageous competitive sealed proposal as
23 determined by the department. If the bid of the lowest responsible bidder or the
24 proposal of the person submitting the most advantageous competitive sealed
25 proposal is determined by the department to be in excess of the estimated reasonable

ASSEMBLY BILL 788

SECTION 3

FWS SB: 2

value of the work or not in the public interest, the department may reject all bids or competitive sealed proposals. Every such contract is exempted from ss. ~~16.70 to 16.75~~, ^{16.705(5), 16.705(6) to} 16.75, 16.755, 16.76, 16.767 to ~~16.77, 16.78~~ ^{16.705(5m),} to 16.82, 16.855, 16.87, and 16.89, but ss. 16.528, ~~16.753~~, 16.754, and 16.765 apply to the contract. Every such contract involving an expenditure of more than \$60,000 is not valid until the contract is approved by the governor. ✓

SECTION 4. 25.18 (1) (a) of the statutes is amended to read:

25.18 (1) (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch. 16 and s. 20.930, except s. ~~16.753~~ ^{16.705(5m)}, employ special legal or investment counsel in any matters arising out of the scope of its investment authority. The employment of special legal counsel shall be with the advice and consent of the attorney general whenever such special counsel is to be compensated by the board. Any expense of counsel so employed shall be borne by the fund for which the services shall be furnished. ✓

SECTION 5. 25.18 (1) (f) of the statutes is amended to read:

25.18 (1) (f) Maintain and repair any building or other structure or premises which it owns in fee or in which it owns the beneficial interest and, notwithstanding all provisions of subch. IV or V of ch. 16, except s. ~~16.753~~ ^{16.705(5m)}, it shall have exclusive authority to make such agreements and enter into such contracts as it deems necessary for such purpose. All noncapital costs under this paragraph shall be charged to the current income accounts of the funds having an interest in the building, structure or premises. ✓

SECTION 6. 25.18 (1) (m) of the statutes is amended to read:

25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16, except s. ~~16.753~~ ^{16.705(5m)}, employ professionals, contractors or other agents necessary to

ASSEMBLY BILL 788

1 evaluate or operate any property if a fund managed by the board has an interest in,
 2 or is considering purchasing or lending money based upon the value of, that property.
 3 Costs under this paragraph shall be paid by the fund and charged to the appropriate
 4 account under s. 40.04 (3).

5 **SECTION 7.** 84.01 (13) of the statutes is amended to read:

6 **84.01 (13) ENGINEERING SERVICES.** The department may engage such
 7 engineering, consulting, surveying, or other specialized services as it deems
 8 advisable. Any engagement of services under this subsection is exempt from ss.
 9 ~~16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89~~, but ss. 16.528, 16.752, ~~16.753~~, and
 10 16.754 apply to such engagement. Any engagement involving an expenditure of
 11 \$3,000 or more shall be by formal contract approved by the governor.

12 **SECTION 8.** 84.06 (2) (a) of the statutes is amended to read:

13 **84.06 (2) (a)** All such highway improvements shall be executed by contract
 14 based on bids unless the department finds that another method as provided in sub.
 15 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in
 16 the manner determined by the department. Except as provided in s. 84.075, the
 17 contract shall be awarded to the lowest competent and responsible bidder as
 18 determined by the department. If the bid of the lowest competent bidder is
 19 determined by the department to be in excess of the estimated reasonable value of
 20 the work or not in the public interest, all bids may be rejected. The department shall,
 21 so far as reasonable, follow uniform methods of advertising for bids and may
 22 prescribe and require uniform forms of bids and contracts. Except as provided in par.
 23 (b), the secretary shall enter into the contract on behalf of the state. Every such
 24 contract is exempted from ss. ~~16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89~~, but
 25 ss. 16.528, ~~16.752, 16.753~~, and 16.754 apply to the contract. Any such contract

as affected by 2005 Wisconsin
Act... (Assembly
Bill 105),

16.705(5), 16.705(6) to
16.705(5m), stays scored

Ans SA

stays scored

2WS5B:4

ASSEMBLY BILL 788

SECTION 8

1 involving an expenditure of \$1,000 or more shall not be valid until approved by the
2 governor. The secretary may require the attorney general to examine any contract
3 and any bond submitted in connection with the contract and report on its sufficiency
4 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
5 by the governor and shall be subject to approval by the secretary. This subsection
6 also applies to contracts with private contractors based on bids for maintenance
7 under s. 84.07.

8 **SECTION 9.** 84.06 (3) of the statutes is amended to read:

9 84.06 (3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS. If
10 the department finds that it would be more feasible and advantageous to have the
11 improvement performed by the county in which the proposed improvement is located
12 and without bids, the department may, by arrangement with the county highway
13 committee of the county, enter into a contract satisfactory to the department to have
14 the work done by the county forces and equipment. In such contract the department
15 may authorize the county to purchase, deliver, and store materials and may fix the
16 rental rates of small tools and equipment. The contract shall be between the county
17 and the state and shall not be based on bids, and may be entered into on behalf of the
18 county by the county highway committee and on behalf of the state by the secretary.
19 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
20 except s. ss. ~~16.753~~ ^{16.705 (5m)} and 16.754. If the total estimated indebtedness to be incurred
21 exceeds \$5,000 the contract shall not be valid until approved by the governor. The
22 provisions of this subsection relating to agreements between a county and the state
23 shall also authorize and apply to such arrangements between a city, town, or a village
24 and the state. In such cases, the governing body of the city, town, or village shall
25 enter into the agreement on behalf of the municipality.

TWS SB: 5

ASSEMBLY BILL 788

✓
1 **SECTION 10.** 84.06 (4) of the statutes is amended to read:

2 **84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES.** If an improvement
3 undertaken by the department will cross or affect the property or facilities of a
4 railroad or public utility company, the department may, upon finding that it is
5 feasible and advantageous to the state, arrange to perform portions of the
6 improvement work affecting such facilities or property or perform work of altering,
7 rearranging, or relocating such facilities by contract with the railroad or public
8 utility. Such contract shall be between the railroad company or public utility and the
9 state and need not be based on bids. The contract may be entered into on behalf of
10 the state by the secretary. Every such contract is exempted from s. 779.14 and from
11 all provisions of chs. 16 and 230, except ss. 16.528, ^{16.705 (5m)} ~~16.752, 16.753, and 16.754~~ _{stays}. No
12 such contract in which the total estimated debt to be incurred exceeds \$5,000 shall
13 be valid until approved by the governor. As used in this subsection, "public utility"
14 means the same as in s. 196.01 (5), and includes a telecommunications carrier as
15 defined in s. 196.01 (8m), and "railroad" means the same as in s. 195.02. "Property"
16 as used in this subsection includes but is not limited to tracks, trestles, signals, grade
17 crossings, rights-of-way, stations, pole lines, plants, substations, and other
18 facilities. Nothing in this subsection shall be construed to relieve any railroad or
19 public utility from any financial obligation, expense, duty, or responsibility
20 otherwise provided by law relative to such property.

21 **SECTION 11.** 85.015 of the statutes is amended to read: ✓

22 **85.015 Transportation assistance contracts.** All contracts entered into
23 under this chapter to provide financial assistance in the areas of railroads, urban
24 mass transit, specialized transportation, and harbors are subject to ss. 16.528 and,

ASSEMBLY BILL 788

SECTION 11

16.752, and ~~16.753~~ but are exempt from ss. 16.70 to ~~16.75~~, 16.755 to 16.82 and ~~16.85~~
to ~~16.87~~, and ~~16.875~~ to 16.89.

SECTION 12. 102.81 (2) of the statutes is amended to read:

102.81 (2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and may obtain excess or stop-loss reinsurance with an insurance carrier authorized to do business in this state in an amount that the secretary determines is necessary for the sound operation of the uninsured employers fund. In cases involving disputed claims, the department may retain an attorney to represent the interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and all provisions of subch. IV of ch. 16, except s. ~~16.753~~, do not apply to an attorney hired under this subsection. The charges for the services retained under this subsection shall be paid from the appropriation under s. 20.445 (1) (hp). The cost of any reinsurance obtained under this subsection shall be paid from the appropriation under s. 20.445 (1) (sm).

SECTION 13. 221.0903 (4) (b) of the statutes is amended to read:

221.0903 (4) (b) *Contracts for examination services.* The division may enter into contracts with any bank supervisory agency with concurrent jurisdiction over a state bank or an in-state branch of an out-of-state state bank to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the division's examiners to the agency at a reasonable rate of compensation. Contracts entered into under this paragraph are exempt from ss. 16.70 to ~~16.752~~, ~~16.754~~ to 16.76, and 16.767 to 16.82.

SECTION 14. 655.27 (2) of the statutes is amended to read:

ASSEMBLY BILL 788

(PWS 5B:7)

655.27 (2) FUND ADMINISTRATION AND OPERATION. Management of the fund shall be vested with the board of governors. The commissioner shall either provide staff services necessary for the operation of the fund or, with the approval of the board of governors, contract for all or part of these services. Such a contract is subject to s. ~~16.705 (SM)~~ ~~16.753~~ and 16.765, but is otherwise exempt from subch. IV of ch. 16. The commissioner shall adopt rules governing the procedures for creating and implementing these contracts before entering into the contracts. At least annually, the contractor shall report to the commissioner and to the board of governors regarding all expenses incurred and subcontracting arrangements. If the board of governors approves, the contractor may hire legal counsel as needed to provide staff services. The cost of contracting for staff services shall be funded from the appropriation under s. 20.145 (2) (u).

SECTION 15. Initial applicability.

(1) This act first applies with respect to solicitations made, negotiations for proposed contracts commenced, and orders placed, whichever first occurs, on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2092/1dn

JTK...*kjf*

Date

UPS:
fix spacing throughout

Representative Berceau:

1. For this draft, I have included an appropriation but have specified "\$-0-" for expenditure in fiscal years 2005-06 and 2006-07. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate. For the purpose of obtaining fiscal information, you may wish to request the fiscal estimate prior to introduction or request the assistance of the Legislative Fiscal Bureau.

2. Proposed s. 16.705 (5m) (f) [✓]exempts from the application of the contract review requirements created by this draft any proposed solicitation or contract to renew an existing contractual services contract under substantially the same terms and conditions, plus reasonable price adjustments necessitated by actual cost increases. I chose this wording because I understand that you are concerned primarily with the loss of existing state employee positions rather than attempting to expand the role of state employees. It seemed reasonable that an existing contract proposed for renewal would need to incorporate a reasonable price adjustment, but I thought if the price adjustment were to become excessive, it might encourage vendors to submit unrealistically underpriced proposals and then attempt to recoup lost earnings when a contract is renewed.

X 3. Proposed s. 15.55, which provides for appointments to be made to the proposed contract review board by members of the legislature, could raise an issue under the separation-of-powers provisions of the Wisconsin constitution [art. IV, sec. 1 and art. V, sec. 1] because the draft places control of administrative and enforcement functions within the legislative branch. Under the separation-of-powers doctrine, a statute may not materially impair or practically defeat the proper function of a particular branch of government and the exercise of powers delegated to it. *In Matter of E.B.*, 11 Wis. 2d 175, 184 (1983). With respect to a power that is shared ^{AA}between ~~between~~ branches, a statute may not unduly burden or substantiality interfere with another branch's essential role and powers. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360 (1989). While a provision of the type contained in this draft is expressly prohibited under the constitutions of some states, the Wisconsin ^{AA}constitution contains no express prohibition. The Wisconsin supreme court has indicated that in this state the separation-of-powers principle will not be applied inflexibly. The test is whether there will be an actual and substantial encroachment, rather than a theoretical bridging of *e*

X

X

X

the separation of power, *J.F. Ahern v. Building Comm.* 114 Wis. 2d 69, 104 (Ct. App., 1983) as quoted in *Martínez v. DILHR*, 165 Wis. 2d 687, 697 (1992). Whether proposed s. 15.55 will be viewed by the courts as a substantial encroachment by one branch of government upon the proper function of another branch cannot be determined with certainty.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

TWS 5A

1 16.705 (8) (intro.) The department shall, annually on or before October 15,
2 submit to the governor, the joint committee on finance, the joint legislative audit
3 committee and the chief clerk of each house of the legislature for distribution to the
4 appropriate standing committees under s. 13.172 (3), a report concerning the
5 number, value and nature of contractual service procurements authorized for each
6 agency during the preceding fiscal year. The report shall also include, with respect
7 to contractual service procurements by agencies for the preceding fiscal year:

8 **SECTION 6.** 16.705 (8) (a) and (b) of the statutes are created to read:

9 16.705 (8) (a) A summary of the cost-benefit analyses completed by agencies
10 in compliance with rules promulgated by the department under sub. (2).

11 (b) Recommendations for elimination of unneeded contractual service
12 procurements and for consolidation or resolicitation of existing contractual service
13 procurements.

14 **SECTION 7.** 84.01 (13) of the statutes is amended to read:

15 84.01 (13) ENGINEERING SERVICES. The department may engage such
16 engineering, consulting, surveying or other specialized services as it deems
17 advisable. Any engagement of services under this subsection is exempt from ss.
18 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89, but ss. 16.528, 16.752 and 16.754
19 apply to such engagement. Any engagement involving an expenditure of \$3,000 or
20 more shall be by formal contract approved by the governor. The department shall
21 conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g), of each proposed
22 engagement under this subsection that involves an estimated expenditure of more
23 than \$25,000 in accordance with standards prescribed by rule of the department. The
24 department shall review periodically, and before any renewal, the continued

no
scoring

1 appropriateness of contracting pursuant to each engagement under this subsection
2 that involves an estimated expenditure of more than \$25,000.

3 **SECTION 8. Nonstatutory provisions.**

4 (1) REPORTS ON INITIAL TRAINING. In each of the first 3 annual reports submitted
5 by the department of administration under section 16.705 (8) of the statutes
6 following the effective date of this subsection, the department shall include a list of
7 the agencies that have completed training required for preparation of cost-benefit
8 analyses for contractual service procurements by the agencies in accordance with
9 rules promulgated by the department.

10 (2) EMERGENCY RULES ON CONTRACTUAL SERVICE PROCUREMENT. Using the
11 procedure under section 227.24 of the statutes, the departments of administration
12 and transportation, respectively, shall, no later than the first day of the 6th month
13 beginning after the effective date of this subsection, promulgate the rules required
14 under sections 16.705 and 84.01 (13) of the statutes, as affected by this act, as
15 emergency rules, which shall be in effect for the period before the effective date of the
16 permanent rules promulgated under sections 16.705 and 84.01 (13) of the statutes,
17 as affected by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes,
18 the departments of administration and transportation are not required to provide
19 evidence that promulgating a rule under this subsection as an emergency rule is
20 necessary for the preservation of the public peace, health, safety, or welfare and are
21 not required to provide a finding of emergency for a rule promulgated under this
22 subsection.

23 **SECTION 9. Initial applicability.**

CPS:
from AB 105

INSTIT

AB105, s. 2



Pg3Ln13

Section 2. 16.705 (1) of the statutes is amended to read:

AB105, s. 2 - continued



Pg3Ln14

16.705 (1) The department or its agents may contract for services which can

Pg3Ln15

be performed more economically or efficiently by such contract. The department

Pg3Ln16

shall, by rule, prescribe uniform procedures for determining whether services are

Pg3Ln17

appropriate for contracting under this subsection.

no
score

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2092/1dn
JTK:kjfrs

November 18, 2005

Representative Berceau:

1. For this draft, I have included an appropriation but have specified "\$-0-" for expenditure in fiscal years 2005-06 and 2006-07. When you know the dollar amounts that you need to include in the proposal, contact me and I will either redraft the proposal or draft an amendment, whichever is appropriate. For the purpose of obtaining fiscal information, you may wish to request the fiscal estimate prior to introduction or request the assistance of the Legislative Fiscal Bureau.
2. Proposed s. 16.705 (5m) (f) exempts from the application of the contract review requirements created by this draft any proposed solicitation or contract to renew an existing contractual services contract under substantially the same terms and conditions, plus reasonable price adjustments necessitated by actual cost increases. I chose this wording because I understand that you are concerned primarily with the loss of existing state employee positions rather than attempting to expand the role of state employees. It seemed reasonable that an existing contract proposed for renewal would need to incorporate a reasonable price adjustment, but I thought if the price adjustment were to become excessive, it might encourage vendors to submit unrealistically underpriced proposals and then attempt to recoup lost earnings when a contract is renewed.
3. Proposed s. 15.55, which provides for appointments to be made to the proposed contract review board by members of the legislature, could raise an issue under the separation-of-powers provisions of the Wisconsin Constitution [art. IV, sec. 1 and art. V, sec. 1] because the draft places control of administrative and enforcement functions within the legislative branch. Under the separation-of-powers doctrine, a statute may not materially impair or practically defeat the proper function of a particular branch of government and the exercise of powers delegated to it. *In Matter of E.B.*, 11 Wis. 2d 175, 184 (1983). With respect to a power that is shared between branches, a statute may not unduly burden or substantially interfere with another branch's essential role and powers. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 360 (1989). While a provision of the type contained in this draft is expressly prohibited under the constitutions of some states, the Wisconsin Constitution contains no express prohibition. The Wisconsin Supreme Court has indicated that in this state the separation-of-powers principle will not be applied inflexibly. The test is whether there will be an actual and substantial encroachment, rather than a theoretical bridging of

the separation of power. *J.F. Ahern v. Building Comm.* 114 Wis. 2d 69, 104 (Ct. App., 1983) as quoted in *Martinez v. DILHR*, 165 Wis. 2d 687, 697 (1992). Whether proposed s. 15.55 will be viewed by the courts as a substantial encroachment by one branch of government upon the proper function of another branch cannot be determined with certainty.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2092/1

JTK:kjf:s

MON 12/5

2005 BILL

Regen

1 AN ACT *to amend* 16.705 (1), 16.75 (1) (a) 1., 16.75 (6) (bm), 16.75 (6) (e), 23.41
2 (5), 25.18 (1) (a), 25.18 (1) (f), 25.18 (1) (m), 84.01 (13), 84.06 (2) (a), 84.06 (3),
3 84.06 (4), 85.015, 102.81 (2), 221.0903 (4) (b) and 655.27 (2); and *to create* 15.07
4 (1) (a) 7., 15.07 (5) (zm), 15.55, 16.705 (5m) and 20.240 of the statutes; **relating**
5 **to:** review of certain proposed state contractual service engagements and
6 creation of a contract review board.

Analysis by the Legislative Reference Bureau

Currently, the Department of Administration (DOA) and those executive branch agencies to which DOA delegates purchasing authority may enter into contracts for contractual services if the services can be performed more economically or efficiently by contract than through the use of state employees. This bill provides that DOA and its agents may enter into contracts for contractual services only if the services can be performed more economically by contract than through the use of state employees.

Currently, before a vendor is engaged to perform services that are currently being performed by represented state employees, the decision to contract for the services must first be bargained collectively in good faith by the state with the certified representative of the employees to the point of impasse. If no agreement is reached, the state may proceed to contract for the services. In addition, with certain exceptions, any proposal to engage a person to perform contractual services for a

BILL

state agency must first be submitted to DOA for review and approval. The agency requesting approval of a proposed engagement must submit written justification for the proposal which must include justification of need, justification for not contracting with other state agencies, a specific description of the scope of the services to be performed by contract, and justification for the procurement process if a process other than competitive bidding is to be used. In addition, certain proposed contracts for contractual services must be reviewed by the director of the Office of State Employment Relations in DOA in order to ensure that the contracting agency properly utilizes the services of state employees, evaluates the feasibility of using limited-term appointments prior to entering into the contract, and does not enter into a contract that would conflict with an existing collective bargaining agreement.

This bill provides, in addition to these requirements, with certain exceptions, that each proposed engagement to perform services for an executive branch state agency must be submitted for prior review and approval of a contract review board that is created by the bill. The board consists of seven members serving for two-year terms. Two of the members are appointed by the governor, one of whom must be a representative of an organization that is certified by the Wisconsin Employment Relations Commission to represent state employees, if any. In addition, one member each is appointed by the speaker of the assembly, the minority leader of the assembly, the president of the senate, the senate minority leader, and the director of the Office of State Employment Relations in DOA.

Under the bill, the review requirement applies only if DOA or an agency to which DOA has delegated contracting authority determines that the proposed engagement will result in the net reduction of at least one full-time equivalent state position. The bill requires an agency to provide the board with certain information to be used in conducting its review. The board must approve the proposed engagement if it determines that the proposed engagement is consistent with state law and that the quality of services and cost benefits resulting from the engagement are greater than the quality of services and cost benefits to the state resulting from performance of the services by state employees. The board must exclude any savings resulting from replacement of state employees by nonstate personnel who are younger in age than the state employees.

The review requirements do not apply to a proposed engagement that has been bargained collectively with the certified representative for each state position the majority of whose duties will be displaced under the engagement if the representative agrees to the engagement. The review requirements do not apply to renewal of an existing contractual services agreement upon substantially the same terms and conditions, plus reasonable price adjustments necessitated by actual cost increases. ~~In addition, the review requirements do not apply if each state agency for whom services are to be performed determines that its existing staff and the staff of other state agencies have no capability to perform the services required under the proposed solicitation or contract.~~ Under the bill, decisions of the Contract Review Board may be appealed under the State Administrative Procedure Act and are subject to judicial review.

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.07 (1) (a) 7. of the statutes is created to read:

2 15.07 (1) (a) 7. Members of the contract review board shall be appointed as
3 provided in s. 15.55.

4 **SECTION 2.** 15.07 (5) (zm) of the statutes is created to read:

5 15.07 (5) (zm) Members of the contract review board, \$25 per day.

6 **SECTION 3.** 15.55 of the statutes is created to read:

7 **15.55 Contract review board; creation.** There is created a contract review
8 board consisting of 7 members serving for 2-year terms. Two of the members shall
9 be appointed by the governor, of whom one shall be a representative of an
10 organization that is certified to represent employees under such. V of ch. 111, if any;
11 one member shall be appointed by the director of the office of state employment
12 relations in the department of administration; one member shall be appointed by the
13 speaker of the assembly; one member shall be appointed by the minority leader of
14 the assembly; one member shall be appointed by the president of the senate; and one
15 member shall be appointed by the minority leader of the senate.

16 **SECTION 4.** 16.705 (1) of the statutes, as affected by 2005 Wisconsin Act
17 (Assembly Bill 105), is amended to read:

18 16.705 (1) The Subject to approval under sub. (5m) whenever required, the
19 department or its agents may contract for services which can be performed more
20 economically ~~or efficiently~~ by such contract. The department shall, by rule, prescribe

BILL

1 uniform procedures for determining whether services are appropriate for
2 contracting under this subsection.

3 **SECTION 5.** 16.705 (5m) of the statutes is created to read:

4 16.705 (5m) (a) Except as authorized in par. (e), after each proposed
5 engagement to perform contractual services is approved under sub. (2) and under
6 sub. (3), whenever required, if the department or another agency to whom the
7 department has delegated contracting authority under s. 16.71 (1) determines that
8 the proposed engagement will result in the net reduction of at least one full-time
9 equivalent position, or that the proposed engagement is a renewal of a previous
10 engagement that is not exempted under par. (f), the contracting agency shall not
11 solicit bids or competitive sealed proposals and shall not enter into any contract to
12 perform those services until the agency submits the proposed solicitation, or if there
13 is to be no solicitation, the proposed contract for review of the contract review board
14 and the board approves the proposed engagement.

15 (b) The agency shall provide the contract review board with all information
16 required by the board to determine whether the proposed solicitation or contract
17 should be approved. The information shall include a comprehensive analysis, in the
18 form prescribed by the contract review board, of the costs and benefits of replacing
19 one or more state positions with services performed by contract.

20 (c) The contract review board shall approve the proposed solicitation or
21 contract if the board determines that the proposed contracting is consistent with
22 state law and that the quality of services and the cost benefits to the state of
23 contracting for services are greater than the quality of services and cost benefits
24 resulting from performance of the services by state employees. If the board
25 determines that the quality of services and cost benefits to the state of contracting

BILL

1 for services are substantially equivalent to the quality of services and cost benefits
2 to the state resulting from performance of the services by state employees, the board
3 shall disapprove the proposed solicitation or contract.

4 (d) In determining the cost benefits to the state that will result from
5 replacement of one or more net full-time equivalent positions with contractual
6 services under par. (c), the contract review board shall exclude any savings resulting
7 from replacement of state employees who occupy the positions to be replaced with
8 nonstate personnel who are younger in age than those state employees. The contract
9 review board may request information from any proposed vendor concerning the
10 ages of the personnel who will be performing services under any proposed
11 contractual services contract. The contract review board may also request
12 information from any agency for which contractual services will be performed under
13 a proposed solicitation or contract concerning any employees of the agency the
14 majority of whose time would be spent performing services required under the
15 proposed solicitation or contract if no engagement occurs. Each agency shall provide
16 the information requested by the contract review board under this paragraph. No
17 agency may enter into a contract with any vendor who fails to provide complete
18 information to the contract review board pursuant to an authorized request under
19 this paragraph.

20 (e) Paragraph (a) does not apply to a proposed solicitation or contract that has
21 been bargained collectively with the certified representative for each state position
22 the majority of whose duties will be displaced under the proposed solicitation or
23 contract and with respect to which the representative has agreed in writing to the
24 proposed solicitation or contract.

BILL**SECTION 5**

1 (f) Paragraph (a) does not apply to any proposed solicitation or contract to
2 renew an existing contractual services contract under substantially the same terms
3 and conditions, plus reasonable price adjustments necessitated by actual cost
4 increases.

5 ~~(g) Paragraph (a) does not apply to any proposed solicitation or contract to~~
6 ~~perform contractual services if each agency for whom the services are to be performed~~
7 ~~determines that its existing staff and the staff of other agencies have no capability~~
8 ~~to perform the services required under the proposed solicitation or contract.~~

9 ~~(g)~~ (h) Any aggrieved person may appeal a decision of the contract review board
10 and the appeal shall be treated as a contested case under ch. 227.

11 **SECTION 6.** 16.75 (1) (a) 1. of the statutes, as affected by 2005 Wisconsin Act 25,
12 is amended to read:

13 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
14 materials, supplies, equipment, and contractual services to be provided to any
15 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),
16 (6), (7), (8), (9), and (10m) and ss. 16.705 (5m), 16.73 (4) (a), 16.751, 16.754, 50.05 (7)
17 (f), 153.05 (2m) (a), 287.15 (7), and 301.265, shall be awarded to the lowest
18 responsible bidder, taking into consideration life cycle cost estimates under sub.
19 (1m), when appropriate, the location of the agency, the quantities of the articles to
20 be supplied, their conformity with the specifications, and the purposes for which they
21 are required and the date of delivery.

22 **SECTION 7.** 16.75 (6) (bm) of the statutes is amended to read:

23 16.75 (6) (bm) If the secretary determines that it is in the best interest of this
24 state to do so, he or she may waive any requirement under subs. (1) to (5) and ss.
25 16.705 and 16.72 (2) (e) and (f) and (5) except s. 16.705 (5m) with respect to any

BILL

contract entered into by the department of workforce development under s. 49.143, if the department of workforce development presents the secretary with a process for the procurement of contracts under s. 49.143 and the secretary approves the process.

SECTION 8. 16.75 (6) (e) of the statutes is amended to read:

16.75 (6) (e) The governor or his or her designee may waive any requirement of this subchapter if the governor or his or her designee finds that there exists an emergency which threatens the public health, safety or welfare and the waiver is necessary to meet the emergency. The governor or his or her designee shall require the award of each contract under this paragraph to be made with such competition as is practicable under the circumstances. The governor or his or her designee shall file with the department a statement of facts constituting the emergency for each waiver issued under this paragraph, and a statement of the basis for selection of each contractor under the emergency procedure. This paragraph does not apply to the requirement requirements specified in sub. (7) and s. 16.705 (5m).

SECTION 9. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	2005-06	2006-07
--	---------	---------

20.240 Contract review board

(1) REVIEW OF STATE CONTRACTUAL SERVICES

AGREEMENTS

(a) General program operations	GPR	A	-0-	-0-
--------------------------------	-----	---	-----	-----

SECTION 10. 20.240 of the statutes is created to read:

20.240 Contract review board. There is appropriated to the contract review board for the following program:

BILL**SECTION 10**

1 (1) REVIEW OF STATE CONTRACTUAL SERVICES AGREEMENTS. (a) *General program*
2 *operations.* The amounts in the schedule for the general program operations of the
3 contract review board.

4 **SECTION 11.** 23.41 (5) of the statutes is amended to read:

5 23.41 (5) Each contract for construction work entered into by the department
6 under this section shall be awarded on the basis of bids or competitive sealed
7 proposals in accordance with procedures established by the department. Each
8 contract for construction work shall be awarded to the lowest responsible bidder or
9 the person submitting the most advantageous competitive sealed proposal as
10 determined by the department. If the bid of the lowest responsible bidder or the
11 proposal of the person submitting the most advantageous competitive sealed
12 proposal is determined by the department to be in excess of the estimated reasonable
13 value of the work or not in the public interest, the department may reject all bids or
14 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to
15 16.705 (5), 16.705 (6) to 16.75, 16.755, 16.76, 16.767 to 16.77, 16.78 to 16.82, 16.855,
16 16.87, and 16.89, but ss. 16.705 (5m), 16.528, 16.754, and 16.765 apply to the
17 contract. Every such contract involving an expenditure of more than \$60,000 is not
18 valid until the contract is approved by the governor.

19 **SECTION 12.** 25.18 (1) (a) of the statutes is amended to read:

20 25.18 (1) (a) Notwithstanding s. 20.930 and all provisions of subch. IV of ch.
21 16 and s. 20.930, except s. 16.705 (5m), employ special legal or investment counsel
22 in any matters arising out of the scope of its investment authority. The employment
23 of special legal counsel shall be with the advice and consent of the attorney general
24 whenever such special counsel is to be compensated by the board. Any expense of

BILL

1 counsel so employed shall be borne by the fund for which the services shall be
2 furnished.

3 **SECTION 13.** 25.18 (1) (f) of the statutes is amended to read:

4 25.18 (1) (f) Maintain and repair any building or other structure or premises
5 which it owns in fee or in which it owns the beneficial interest and, notwithstanding
6 all provisions of subch. IV or V of ch. 16, except s. 16.705 (5m), it shall have exclusive
7 authority to make such agreements and enter into such contracts as it deems
8 necessary for such purpose. All noncapital costs under this paragraph shall be
9 charged to the current income accounts of the funds having an interest in the
10 building, structure or premises.

11 **SECTION 14.** 25.18 (1) (m) of the statutes is amended to read:

12 25.18 (1) (m) Notwithstanding all provisions of subchs. IV and V of ch. 16,
13 except s. 16.705 (5m), employ professionals, contractors or other agents necessary to
14 evaluate or operate any property if a fund managed by the board has an interest in,
15 or is considering purchasing or lending money based upon the value of, that property.
16 Costs under this paragraph shall be paid by the fund and charged to the appropriate
17 account under s. 40.04 (3).

18 **SECTION 15.** 84.01 (13) of the statutes, as affected by 2005 Wisconsin Act
19 (Assembly Bill 105), is amended to read:

20 84.01 (13) ENGINEERING SERVICES. The department may engage such
21 engineering, consulting, surveying, or other specialized services as it deems
22 advisable. Any engagement of services under this subsection is exempt from ss.
23 16.70 to 16.705 (5), 16.705 (6) to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss.
24 16.528, 16.705 (5m), 16.752, and 16.754 apply to such engagement. Any engagement
25 involving an expenditure of \$3,000 or more shall be by formal contract approved by

BILL**SECTION 15**

1 the governor. The department shall conduct a uniform cost-benefit analysis, as
2 defined in s. 16.70 (3g), of each proposed engagement under this subsection that
3 involves an estimated expenditure of more than \$25,000 in accordance with
4 standards prescribed by rule of the department. The department shall review
5 periodically, and before any renewal, the continued appropriateness of contracting
6 pursuant to each engagement under this subsection that involves an estimated
7 expenditure of more than \$25,000.

8 **SECTION 16.** 84.06 (2) (a) [✓] of the statutes is amended to read:

9 84.06 (2) (a) All such highway improvements shall be executed by contract
10 based on bids unless the department finds that another method as provided in sub.
11 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in
12 the manner determined by the department. Except as provided in s. 84.075, the
13 contract shall be awarded to the lowest competent and responsible bidder as
14 determined by the department. If the bid of the lowest competent bidder is
15 determined by the department to be in excess of the estimated reasonable value of
16 the work or not in the public interest, all bids may be rejected. The department shall,
17 so far as reasonable, follow uniform methods of advertising for bids and may
18 prescribe and require uniform forms of bids and contracts. Except as provided in par.
19 (b), the secretary shall enter into the contract on behalf of the state. Every such
20 contract is exempted from ss. 16.70 to 16.705 (5), 16.705 (6) to 16.75, 16.755 to 16.82,
21 16.87 and 16.89, but ss. 16.528, 16.705 (5m), 16.752, and 16.754 apply to the contract.
22 Any such contract involving an expenditure of \$1,000 or more shall not be valid until
23 approved by the governor. The secretary may require the attorney general to
24 examine any contract and any bond submitted in connection with the contract and
25 report on its sufficiency of form and execution. The bond required by s. 779.14 (1m)

BILL

1 is exempt from approval by the governor and shall be subject to approval by the
2 secretary. This subsection also applies to contracts with private contractors based
3 on bids for maintenance under s. 84.07.

4 **SECTION 17.** 84.06 (3) of the statutes is amended to read:

5 84.06 (3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS. If
6 the department finds that it would be more feasible and advantageous to have the
7 improvement performed by the county in which the proposed improvement is located
8 and without bids, the department may, by arrangement with the county highway
9 committee of the county, enter into a contract satisfactory to the department to have
10 the work done by the county forces and equipment. In such contract the department
11 may authorize the county to purchase, deliver, and store materials and may fix the
12 rental rates of small tools and equipment. The contract shall be between the county
13 and the state and shall not be based on bids, and may be entered into on behalf of the
14 county by the county highway committee and on behalf of the state by the secretary.
15 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
16 except s. ss. 16.705 (5m) and 16.754. If the total estimated indebtedness to be
17 incurred exceeds \$5,000 the contract shall not be valid until approved by the
18 governor. The provisions of this subsection relating to agreements between a county
19 and the state shall also authorize and apply to such arrangements between a city,
20 town, or a village and the state. In such cases, the governing body of the city, town,
21 or village shall enter into the agreement on behalf of the municipality.

22 **SECTION 18.** 84.06 (4) of the statutes is amended to read:

23 84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement
24 undertaken by the department will cross or affect the property or facilities of a
25 railroad or public utility company, the department may, upon finding that it is

BILL**SECTION 18**

feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging, or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids. The contract may be entered into on behalf of the state by the secretary. Every such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ss. 16.528, 16.705 (5m), 16.752, and 16.754. No such contract in which the total estimated debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As used in this subsection, “public utility” means the same as in s. 196.01 (5), and includes a telecommunications carrier as defined in s. 196.01 (8m), and “railroad” means the same as in s. 195.02. “Property” as used in this subsection includes but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations, and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty, or responsibility otherwise provided by law relative to such property.

✓
SECTION 19. 85.015 of the statutes is amended to read:

85.015 Transportation assistance contracts. All contracts entered into under this chapter to provide financial assistance in the areas of railroads, urban mass transit, specialized transportation, and harbors are subject to ss. 16.528 and, 16.752, and 16.705 (5m) but are exempt from ss. 16.70 to 16.705 (5), 16.705 (6) to 16.75, 16.755 to 16.82, and 16.85 to 16.89.

✓
SECTION 20. 102.81 (2) of the statutes is amended to read:

102.81 (2) The department may retain an insurance carrier or insurance service organization to process, investigate and pay claims under this section and

BILL

1 may obtain excess or stop-loss reinsurance with an insurance carrier authorized to
2 do business in this state in an amount that the secretary determines is necessary for
3 the sound operation of the uninsured employers fund. In cases involving disputed
4 claims, the department may retain an attorney to represent the interests of the
5 uninsured employers fund and to make appearances on behalf of the uninsured
6 employers fund in proceedings under ss. 102.16 to 102.29. Section 20.918 and all
7 provisions of subch. IV of ch. 16, except s. 16.705 (5m), do not apply to an attorney
8 hired under this subsection. The charges for the services retained under this
9 subsection shall be paid from the appropriation under s. 20.445 (1) (hp). The cost of
10 any reinsurance obtained under this subsection shall be paid from the appropriation
11 under s. 20.445 (1) (sm). ✓

12 **SECTION 21.** 221.0903 (4) (b) of the statutes is amended to read:

13 221.0903 (4) (b) *Contracts for examination services.* The division may enter
14 into contracts with any bank supervisory agency with concurrent jurisdiction over
15 a state bank or an in-state branch of an out-of-state state bank to engage the
16 services of the agency's examiners at a reasonable rate of compensation, or to provide
17 the services of the division's examiners to the agency at a reasonable rate of
18 compensation. Contracts entered into under this paragraph are exempt from ss.
19 16.70 to 16.705 (5), 16.705 (6) to 16.76, and 16.767 to 16.82.

20 **SECTION 22.** 655.27 (2) of the statutes is amended to read: ✓

21 655.27 (2) **FUND ADMINISTRATION AND OPERATION.** Management of the fund shall
22 be vested with the board of governors. The commissioner shall either provide staff
23 services necessary for the operation of the fund or, with the approval of the board of
24 governors, contract for all or part of these services. Such a contract is subject to s.
25 ss. 16.750 (5m) and 16.765, but is otherwise exempt from subch. IV of ch. 16. The

BILL**SECTION 22**

1 commissioner shall adopt rules governing the procedures for creating and
2 implementing these contracts before entering into the contracts. At least annually,
3 the contractor shall report to the commissioner and to the board of governors
4 regarding all expenses incurred and subcontracting arrangements. If the board of
5 governors approves, the contractor may hire legal counsel as needed to provide staff
6 services. The cost of contracting for staff services shall be funded from the
7 appropriation under s. 20.145 (2) (u).

SECTION 23. Nonstatutory provisions.

8
9 (1) INITIAL TERMS. Notwithstanding section 15.55 of the statutes, as created by
10 this act, the members who are initially appointed to serve as members of the contract
11 review board shall serve for terms expiring on May 1, 2007.

12 (2) AUTHORIZED POSITIONS. There is authorized for the contract review board 1.0
13 FTE GPR director position and 1.0 FTE GPR support position to be funded from the
14 appropriation under section 20.240 (1) (a) of the statutes, as created by this act.

15 (END)

Barman, Mike

From: Kuesel, Jeffery
Sent: Thursday, December 01, 2005 2:44 PM
To: Barman, Mike
Subject: LRB-2092 (Berceau) jacketing

Mike,
Rep.. Berceau wants LRB-2092 jacketed. It was sent to editing this afternoon.
Jeff